



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Nevada State Office  
1340 Financial Boulevard  
Reno, Nevada 89502-7147  
<http://www.blm.gov/nv>

**DEC 05 2014**

In Reply Refer To:  
3100 (NV922.I)

CERTIFIED MAIL – 9171 9690 0935 0018 6643 38

### DECISION

Erik Molvar	:	December 9, 2014
WildEarth Guardians	:	Competitive Oil and Gas Lease Sale
319 S. 6 <sup>th</sup> Street	:	Ely District
Laramie, WY 82070		

### PROTEST DISMISSED PARCELS OFFERED FOR SALE

On October 9, 2014, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest (enclosed) from WildEarth Guardians (Guardians). Guardians is protesting all parcels offered for the December 9, 2014 Competitive Oil and Gas Lease Sale (the Sale).

### BACKGROUND

The BLM received nominated parcels for the Sale through March 14, 2014. The nominated parcels included land in Federal mineral estate located in the BLM Nevada's Ely District Office (EYDO). After the NVSO completed preliminary adjudication<sup>1</sup> of the nominated parcels, the NVSO screened each parcel to determine compliance with national and state BLM policies, including BLM's efforts related to the management of Greater Sage Grouse habitat on public lands. The BLM is currently deferring all Greater Sage Grouse habitat acreage, including all lands within Greater Sage Grouse Preliminary Priority Habitat (PPH), Preliminary General

---

<sup>1</sup> Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for District/Field Office review. During preliminary adjudication, the State Office confirms availability of nominated lands for leasing pursuant to 40 U.S.C. § 181 *et seq.*, 43 CFR 3100 *et seq.*, and BLM policies. Once the State Office completes preliminary adjudication, it consolidates the nominated land available for leasing into a preliminary parcel list to send to the District/Field Office for National Environmental Policy Act (NEPA) analysis and leasing recommendations.

Habitat (PGH), and within four (4) miles of leks until the Record of Decision is signed for the BLM National Greater Sage-Grouse Land Use Planning Strategy.<sup>2</sup>

On April 29, 2014, the NVSO sent a preliminary parcel list to EYDO for review. Pursuant to Washington Office (WO) Instructional Memorandum (IM) IM-WO-2010-117, as incorporated into Nevada (NV) IM-NV-2014-032, an interdisciplinary team was formed with BLM specialists to review the parcels. This review is comprised of: (1) field visits to nominated parcels (where appropriate) to determine if there are any resource conflicts; (2) review parcels to ensure they are in conformance with the District's Resource Management Plan's (RMP)<sup>3</sup> decision that these lands are open to fluid mineral leasing; (3) and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.<sup>4</sup> The EYDO's preliminary EA was released on June 11, 2014, for a 30-day period of public review that ended on July 11, 2014.

The EA tiered to the existing RMP in accordance with the Code of Federal Regulations (CFR) 40 CFR 1502.20:

*Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review . . . the subsequent . . . environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

The BLM described its purpose and need for the Sale in its EA as follows (p. 6):

### ***1.5 Purpose and Need for Action***

*The purpose of the action is to offer nominated parcels for competitive oil and gas leasing in the December 2014 Competitive Oil and Gas Lease Sale. Offering nominated parcels for competitive oil and gas leasing allows private individuals or companies to explore the federal mineral estate of lands managed by the federal government for the development of oil and gas resources.*

*The sale of oil and gas leases is needed to allow continued exploration for additional petroleum reserves which would help the United States meet its growing energy needs and to enable the United States to become less dependent on foreign oil sources. This action is being initiated to facilitate the Ely District Office's implementation of the requirements in Executive Order 13212 (2001) and the National Energy Policy Act (2005).*

<sup>2</sup> BLM IM-WO-2012-043, *Greater Sage-Grouse Interim Management Policies and Procedures* (2011); IM-WO-2012-44, *BLM National Greater Sage-Grouse Land Use Planning Strategy* (2011); IM -NV-2012-058, *Revised Direction for Proposed Activities within Greater Sage-Grouse Habitat* (2012); IM-NV-2014-022, *Revised Direction for Proposed Activities within Greater-Grouse Habitat* (2014); and IM-NV-2014-032, *Oil and Gas and Related Planning* (2014).

<sup>3</sup> The Ely RMP and Record of Decision, approved in August, 2008.

<sup>4</sup> See BLM, H-1601-1, *Land Use Planning Handbook*, (Mar. 2005) (p. 42): "after the RMP is approved, any authorizations and management actions approved based on an activity-level or project-specific Environmental Impact Statement (EIS) or EA must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

The EA considered two alternatives (p. 17):

- Under the No Action Alternative, the BLM would not offer any parcels and there would be no December 2014 lease sale. Surface management would remain the same and ongoing oil and gas development would continue on surrounding leased federal, private, and state lands; and
- The “Proposed Action” alternative, which included offering 98 of the 193 nominated parcels in part or in whole that were sent to the EYDO for review.

No other alternatives to the proposed action were apparent that would meet the purpose and need of the Proposed Action. No other alternatives were submitted or proposed during the public comment period (EA p. 19).

The EA describes parcels which were recommended to be deferred, in whole or in part, in section 2.2.1. There were a total of 193 parcels nominated in the Ely District for the Sale. Of these nominated parcels, 97 have been deferred in whole or in part. Reasons for their deferment include:

- Forty parcels require further evaluation for potential adverse impacts to the landscape scale artwork, known as “the City”.
- Parcels within the Lincoln County Conservation Recreation Development Act (LCCRDA) corridor are being permanently removed from the Sale and all future sales.
- Parcels within the White River watersheds, Hydrologic Unit Code (HUC 15010011) require additional time to conduct Section 7 consultation with the U.S. Fish and Wildlife Service (FWS).
- Two parcels contain potential habitat for the special status species Las Vegas Buckwheat and require additional Section 7 consultation with the FWS.
- Two parcels were deferred due to location adjacent to Ely Shoshone tribal lands. Further consultation with the tribe is required.
- Two parcels residing within desert tortoise critical habitat were deferred, in whole or in part, because the BLM received a memorandum from the FWS on June 10, 2014 requesting these parcels be deferred from the Sale.

On September 8, 2014, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for December 9, 2014*<sup>5</sup> (Notice). That Notice was amended on October 3, 2014, to defer six additional parcels, in whole or in part. That Notice was amended again on November 20, 2014 to defer two additional parcels, in whole or in part. A total of 97 parcels, in whole or in part, are offered for the Sale.

## **ISSUES**

Guardians participated in the EYDO’s external scoping<sup>6</sup> by providing written comments. EYDO evaluated Guardians’ written comments in detail and incorporated its substantive comments in

<sup>5</sup> The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

<sup>6</sup> Early public review of the proposed action and solicitation for comments. See H-1790-1 - National Environmental Policy Act Handbook- 6.3.1 p. 39.

the EA. Most of Guardians' arguments in the protest are substantially identical to the comments they provided the EYDO during external scoping for the proposed action.

Guardians' protest generally alleges that they were not allowed a voice or an opportunity to fully comment on the EA. The substance of their comment is that the negative cumulative effects to the environment from drilling on public lands could far outweigh any gas/oil production benefits.

The BLM has reviewed Guardians' allegations in their entirety; the substantive allegations are numbered and provided in bold below with BLM responses following.

**I. Failure to Provide Legally Adequate Public Notice and Opportunity to Comment on the EA.**

Lease sales are cooperative, shared efforts between the NVSO and EYDO. The EYDO conducted public scoping through a press release and a web based announcement notifying the public of the proposed action. The scoping allowed for the public's input from May 6 through May 27, 2014. Guardians responded in writing to the BLM on May 27, 2014.

The EYDO incorporated Guardians' substantive comments into the preliminary EA, where appropriate. On June 11, 2014, the BLM issued a second press release requesting public comment on the preliminary EA, which was posted on the BLM NEPA Register<sup>7</sup> and on the EYDO website for 30 days.

The BLM received numerous comments from private individuals, nongovernmental organizations, Native American Tribes, and governmental entities, but did not receive additional comments from Guardians.

Guardians state that: "*usual & customary practice ...is to post EAs electronically to the State Office O&G Website.*" NEPA does not require a particular location for posting EAs, and does not require the posting of final EAs for additional public comments. Guardians' demonstrated their ability to access and generate comments during the external scoping period for this lease sale on the same website that BLM posted the preliminary and final EAs.

The BLM did provide Guardians an external scoping opportunity, a preliminary EA comment opportunity and an informal exchange of information with the project lead. Therefore, the above Guardians' allegation has been considered, found to be without merit, and is dismissed.

**II. Leasing leads to more oil and gas development, which leaves Wildlife, Open Spaces, and Clean Air and Water at Risk.**

---

<sup>7</sup> The "BLM NEPA Register" is the "National ePlanning Register", searchable through the World Wide Web and designed for professional organizations to efficiently search, locate and comment on NEPA projects. Each project has a corresponding publication website; the publication website for this project is <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=52318>. The EA for this project is posted there as noted above.

BLM Response:

While relying on the Ely RMP, appropriate CFRs, IMs, BLM policy, and the multiple-use resource mandate of Federal Land Policy Management Act (FLPMA), the BLM conducted a thorough EA process relevant to the lease sale stage. This includes a "*Reasonably Foreseeable Development Scenario (RFD) for Oil and Gas Resources*" and analysis of Wildlife, Open Spaces, and Clean Air and Water. Descriptions of the effected environments are found in Chapter 3 and potential environmental effects are analyzed in Chapter 4 of the final EA. A summary of these resources are listed in Table 3.1, Supplemental Authorities and Ely District Additional Resources to Consider. The BLM is not required, but nonetheless analyzed impacts to "open space". Further analysis will occur as appropriate at the Application for Permit to Drill (APD) stage.

In conclusion, the BLM has provided adequate analysis of the potential impacts and risks to these resources in compliance with the above referenced mandates. Therefore, the above Guardians' allegation has been considered, found to be without merit, and is dismissed.

**III. The parcels in Citizens Wilderness Proposal Areas cannot be offered for sale because to do so would violate NEPA and BLM IM-WO-2004-110, Change 1.**

BLM Response:

Guardians cite IM-WO-2004-110, Change 1, which addresses Land Use Plans under development: "*Policy: All SOs are to consider temporarily deferring oil, gas and geothermal leasing on federal lands with land use plans that are currently being revised or amended...*" The Ely RMP was not under amendment or revision during the EA process. The IM also directs: "*Therefore, for new surface disturbing activities, FOs are directed to evaluate during the NEPA process the application of BMPs*". Since leasing is not a surface disturbing activity, the emphasis with Best Management Practices (BMPs) application would be applied at the APD stage.

The Ely RMP did not include Lands with Wilderness Characteristics as part of the planning process when the RMP was revised. The specific policy requiring analysis and management of lands with wilderness characteristics was issued in June of 2012; the RMP was completed and signed in August of 2008. While lands with wilderness characteristics are not managed as wilderness, the potential impacts to lands with wilderness characteristics were analyzed on pages 38, 39, and 40 of the final December 2014 Oil and Gas Lease Sale EA.

Currently, the Ely District has not initiated a plan amendment to determine the status of lands with wilderness characteristics. Rather the District has conducted area or site specific inventory analysis for wilderness characteristics as part of the EA process for proposed projects.

Regarding the lease parcel in unit NV-040-0112 a wilderness characteristics inventory has been conducted since the oil and gas lease sale EA was written. The intensive inventory conducted in 1980 determined the area did not possess outstanding opportunities for solitude and outstanding

opportunities for primitive unconfined recreation. The recent inventory has determined that the findings from the 1980 inventory are still valid for this unit.

In conclusion, the EYDO adequately analyzed identified Lands with Wilderness Characteristics in the final EA, and the EYDO NEPA process at the leasing stage is consistent with IM-WO-2004-110, Change 1. Therefore, the above Guardians' allegation has been considered, found to be without merit, and is dismissed.

**IV. As IM-WO-2004-110, Change 1, states, the BLM is required to evaluate the Application of Best Management Practices (BMPs) when taking leasing actions and there is no indication that the BLM ever evaluated the potential application of BMPs prior to offering the parcels for sale.**

BLM Response:

As previously stated, IM-WO-2004-110, Change 1, applies to lands currently under the land use planning process. The Ely RMP was completed in 2008 with no active amendments or revisions. Further, the IM addresses the APD and not the lease stage; *"For existing leases, BMPs can usually be applied as conditions of approval at the permitting stage to accomplish the management goals of newly revised or amended RMPs."*

Throughout the EA, resource specialists have considered the application of BMPs, and stipulations in their leasing-level evaluations of impact to the resource. Further BMPs will be applied at the APD stage as appropriate: *"Many of the parcels have one or more of the stipulations which limit activity associated with the lease. See Appendix B for details of these stipulations. In addition, if any parcels are developed in the future, site-specific mitigation measures and BMPs (Appendices C and E) would be attached as Conditions of Approval (COA) for each proposed activity, which would be analyzed under future site-specific NEPA analysis. The level of further NEPA analysis will depend upon the results of scoping and the particulars of the proposed action."*<sup>8</sup>

In conclusion, the EA has addressed and anticipated these concerns to the extent they are appropriate at the leasing stage. Application of BMPs will be further evaluated for application during the APD stage. Therefore, the above Guardians' allegation has been considered, found to be without merit, and is dismissed.

**V. White River parcels must be deferred until an Environmental Impact Statement (EIS) has been completed to evaluate impacts on water quality and to endangered fish from hydraulic fracturing on water quality.**

---

<sup>8</sup> As stated in section 2, page 17, Ibid. Exploration Drilling and Production Assumptions: Actual locations of potential exploration wells and field are unknown. Short-term disturbance as defined for the RFD scenario identifies wells in the plugged and abandoned category that would be reclaimed immediately after drilling or construction, in accordance with the COAs and BMPs, page 21, final EA. Third paragraph, page 56, fourth & fifth paragraph, Page 59, Ibid. Section 4.7.1 paragraph 3, page 64, Ibid. Sec. 4.12.1 paragraph 2, page 65, Ibid. in the final EA.

### BLM Response:

The Sale Notice does not contain any parcels within the White River Basin, as noted in the Final EA on pages 18 and 62.

The BLM deferred the parcels in the White River Basin, specifically within the White River Watersheds (Hydrologic Unit Code (HUC) 15010011 – White), because the BLM requires additional time to consult with FWS and the NDOW on leasing lands where subsequent activities associated with the lease could impact groundwater in this sub-basin. This basin provides habitat for listed endangered fish.

In conclusion, the BLM has deferred all parcels that may affect endangered fish until additional consultation occurs. Therefore, the above Guardians' allegation has been considered, found to have merit. However, since the parcels have been deferred until adequate consultation occurs, the allegation is dismissed.

### DECISION

To the extent that Guardians has raised any allegations not specifically discussed herein, they have been considered and are dismissed. For this reason, and for those allegations addressed above, Guardians' protest of the Sale is dismissed and all parcels in the Notice will be offered for sale on December 9, 2014.

### APPEAL INFORMATION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (enclosed). If an appeal is taken, a notice of appeal and/or request for stay must be filed in writing, on paper, in this office, either by mail or personal delivery within 30 days after the date of service. Notices of appeal and/or request for stay that are electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as timely filed. The notice of appeal is considered filed as of the date our office receives the hard copy and places our BLM date stamp on the document.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions regarding this decision, please contact Michael J. Herder, Acting Deputy State Director, Minerals Division, at (775) 861-6585.



Amy Lueders  
State Director

Enclosures:

- 1- Guardians protest letter
- 2- Ely Final EA
- 3- WO IM 2004-110, Change 1
- 4- Form 1842-1